IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 8408 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAVINDRABHAI CHHOTABHAI PATEL - Applicant(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR MTM HAKIM for Applicant(s) : 1,
MR M.R.MENGDEY, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
NOTICE NOT RECD BACK for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 07/09/2007

ORAL JUDGMENT

1. ***Rule***. Mr.M.R.Mengdey, learned APP waives service of Rule on behalf of respondent No.1. Mr.Tushar Vyas, learned Advocate waives service of

Rule on behalf of respondent No.4. With the consent of the learned Advocates appearing on behalf of the respective parties, the matter is taken for final hearing today.

2. By way of this application under Section 482 of the Criminal Procedure Code ('***Cr.P.C.***' for short) the petitioner – original accused has prayed for an appropriate order to quash and set aside the complaint/FIR being C.R.No.I- 213 of 2007 registered with Karelibagh Police Station, Vadodara.

A FIR has been lodged/ filed by respondent No.4 – original complainant with Karelibagh Police Station, Vadodara against the petitioner being C.R.No.I-213 of 2007 dated 05.07.2007 for the offences punishable under Sections 420, 465, 467, 468, 471, 474, 384, 120B of the Indian Penal Code ('***IPC***' for short) for the offences alleged to have happened on 28.01.2005. The said FIR has been lodged on 05.07.2007 i.e. after a period of two years and six months of the alleged incident. It is alleged in the complaint that the petitioner with a view to cause loss to the complainant has initiated various

vexatious and false proceedings by filing Civil Suit No. 295 of 2005 and others with respect to the lands in question and therefore, it is alleged that the petitioner has committed offence as alleged in the complaint. Being aggrieved and dissatisfied with the same the petitioner- original accused has preferred the present application under Section 482 of the Cr.P.C. to quash and set aside the impugned complaint as according to the petitioner the same is nothing but counter blast to the complaints already filed by the petitioner against the original complainant and; that the same has been filed with *malafide* intention and even considering averments and allegations in the complaint, no case is made out against the petitioner for the offences punishable under Sections 420, 465, 467, 468, 471, 474, 384, 120B of the IPC. Therefore, to continue criminal proceedings against the petitioner would be abuse of process of Court.

3. It is the case on behalf of the petitioner that dispute is with regard to land bearing Survey No. 141/2 situated at Village Nagarwada, District Vadodara and for which two Civil Suits being Civil Suit Nos. 689/2001 and 1044/2001 were preferred.

Ultimately the said Suits came to be disposed of vide comprise decree drawn in pursuance to the compromise deed dated 20.03.2003 and necessary mutation entry was also made in the revenue record on the basis of said compromise. That thereafter as the dispute arose amongst the partners of 'Krishna Developers' firm and the petitioner was being denied and deprived of his right, title and interest in the said land and in the partnership firm, he was constrained to file Special Civil Suit No. 295/2005 on 21.06.2005. That thereafter various proceedings have been initiated before the Revenue Authority as well as the Civil Court and even several criminal complaints are pending. In the meantime as a counter blast after a period of two years of alleged incident the impugned complaint has been filed which is nothing but abuse of process of Court. It is submitted by Mr.Hakim, learned Advocate appearing on behalf of the petitioner that merely because some Suits are filed and/or proceedings are initiated in the Competent Court itself cannot be said that the petitioner has committed any offence as alleged under 420, 465, 467, 468, 471, 474, 384, 120B of the IPC. Therefore, it is

requested to quash and set aside the impugned FIR.

4. While opposing the present application Mr.Vyas, learned Advocate appearing on behalf of respondent No.4 has submitted that the petitioner is in habit of filing false and vexatious suits against the complainant before different Courts. On the basis of false documents Civil Suit No. 295 of 2005 has been filed with a view to cause loss to the complainant and therefore, a case is made out against the petitioner for further inquiry/investigation. Therefore, it is requested to dismiss the present application and not to stall the investigation.

5. Mr.M.R.Mengdey, learned APP has requested to pass an appropriate order considering averments and allegations in the complaint.

6. Heard the learned Advocates appearing on behalf of the respective parties.

7. On bare reading of the complaint, averments and allegations in the complaint, it appears that it is alleged by the original complainant in the

complaint that the petitioner has filed various proceedings before the Civil Court which are vexatious and false and; that one Civil Suit No.295/2005 has been filed in the Civil Court at Vadodara, therefore, the petitioner has committed offences under Sections 420, 465, 467, 468, 471, 474, 384, 120B of the IPC. It is not appreciable how by filing Suit it can be said that the petitioner has committed offences under Sections 420, 465, 467, 468, 471, 474, 384, 120B of the IPC. If the original complainant is of the opinion that no cause of action has arisen and such Suit is not maintainable then remedy is available under the provisions of C.P.C. by submitting appropriate application for dismissing the said Suit. Therefore, it cannot be said the petitioner has committed any offences as alleged. It is required to be noted that impugned complaint has been filed after a period two years and six months and after filing of Civil Suit No. 295/2005. On bare reading of the complaint and considering the same to be true and considering the same on its face value, it cannot be said that the petitioner has committed any offences as alleged. Considering above it

appears to the Court that impugned FIR has been filed with *malafide* intention and to harass the petitioner and; that continuous of said proceedings would be abuse of process of Court. Under the circumstances this is a fit case to exercise powers under Section 482 of the Cr.P.C. to quash the impugned FIR and even falls within the parameter to exercise powers under Section 482 of the Cr.P.C.

8. For the reasons stated above, the application succeeds. Impugned Complaint/FIR being C.R.No.I-213 of 2007 dated 05.07.2007 registered with Karelibagh Police Station, Vadodara is hereby quashed and set aside. Rule is made absolute to the aforesaid extent.

[M.R.Shah, J.]

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